

Advisory Opinion

IECDB AO 2011-03

July 19, 2011

S. Brenna Findley
General Counsel
Office of the Governor
State Capitol
Des Moines, IA 50319

Dear Ms. Findley:

This opinion is in response to your request for an opinion from the Iowa Ethics and Campaign Disclosure Board. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapter 68A and 68B, Iowa Code section 8.7, and rule in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the General Counsel for the Governor's Office. You advise the Board that the Governor and Lieutenant Governor are often asked to speak at meetings or serve on discussion panels. You further advise the Board that one or two members of the Governor's staff typically attend these events with the Governor and/or the Lieutenant Governor. These staff members assist the Governor and/or Lieutenant Governor in a number of ways, including but not limited to, writing the speech, briefing the Governor and/or Lieutenant Governor on the subject matter of the speech or panel, ensuring the Governor and/or Lieutenant Governor arrives at the event on time and following up as needed on any request or matter that arises as a result of the speech or panel discussion.

QUESTION:

Is it permissible for one or two staff members who attend a speech or panel discussion given by the Governor or Lieutenant Governor to accept food or beverage from the host of the speech or panel discussion?

OPINION:

Iowa Code section 68B.22 provides that “a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor” unless an exception applies. A “restricted donor” means a person who is any one of the following categories:

- a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.
- b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

- c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.

- d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

Iowa Code § 68B.2(24).

We note at the outset that a gift from a person who is not a restricted donor is permissible. For purposes of this Opinion, we presume the sponsor of the meeting or event where the Governor or Lieutenant Governor is speaking falls within the above-definition of “restricted donor.” Thus, staff members who accompany the Governor or Lieutenant Governor to a speech or panel discussion may not accept food or beverage from the restricted donor unless an exception is applicable.

Iowa Code section 68B.22(4)(g) permits a public employee to accept

“[a]ctual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.”

We broadly construe “participation in a panel or speaking engagement” to include one or more staff members who provide substantial assistance to the Governor and/or Lieutenant Governor in the preparation and execution of a speech or panel discussion. Thus, we believe a staff member may accept food or beverage from a

restricted donor at a meeting or event where the Governor and/or Lieutenant Governor is speaking or serving on a discussion panel as long as the staff member provided substantial assistance to the Governor and/or Lieutenant Governor in the preparation and execution of the speech or panel discussion.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Patricia Harper, Vice Chair
Gerald Sullivan
John Walsh
Saima Zafar
Carole Tillotson

Submitted by: Megan Tooker, Board Legal Counsel